IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 421 OF 2005

SHREEPAD @ SHREEPAL NANA DHAMANE .. PETITIONER

Versus

MILIND BALKRISHNA JOSHI & ORS. .. RESPONDENTS

MR. S. R. Borulkar with A.B. Vagyani for petitioner

Mr. S. S. Patwardhan for R-1 to 3

CORAM:-SMT. RANJANA DESAI, J.

DATED:-15-3-2005

P.C.

This petition is filed by the original tenant. Both the courts have held against the tenant on the ground of non payment of arrears of rent.

2. Admittedly the petitioner was in arrears of rent and has not paid the rent. After receipt of the notice he has not deposited the rent on the first date of hearing. Therefore, the courts below cannot be faulted for passing decree on the ground of arrears of rent.

3. Mr. Borulkar, learned counsel for the petitioner however, laid stress on

Section 37 of the Transfer of Property Act. He also relied on judgment of the Supreme Court in **Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate, 100. B.L.R. (!997) Page 109**. He contended that there was a partition in the family of the landlord. He submitted that in the partition the suit premises came to the share of respondents 1 to 3. Mr. Borulkar contended that the original landlady is respondent 4. However the fact that the partition was effected and allegedly the suit premises came to the share of respondents 1 to 3, and that they became the landlords ought to have been intimated to the petitioner. That was not done and hence the petitioner cannot be faulted for not having paid the rent.

4. I am informed that admittedly after the suit notice was served on the petitioner the petitioner did not take up this point. The petitioner ought to have, in the reply to the notice, raised this point and enquired as to who is the landlord and to whom the rent ought to be paid. Such a point, therefore, cannot be allowed to be urged by the defendant. There is a concurrent unassailable finding of fact returned by the courts below that respondents 1 to 3 are the owners and landlords and the plaintiff has failed to pay arrears of rent. That cannot be disturbed in writ jurisdiction. There is no substance in the petition. The petition is rejected.

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